IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

MACA.No. 121 of 2007()

OPMV.1610/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT - IST RESPONDENT:

MUHAMMED SHABEER, S/O.MUHAMMED NIZAR,
T.C.7,1611, THEJEEJA, TEMPLE ROAD,
KOCHALLOOR, MEDICAL COLLEGE P.O.,
TRIVANDRUM.

BY ADV. SRI.J.S.AJITHKUMAR
SRI.ASOK.V.K.

RESPONDENTS - APPLICANT - 3RD RESPONDENT:
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1. BIJU, S/O.KRISHNAN KUTTY NAIR,
BEENA NIVAS, T.C.41/382, KURIATHY MANACAUD P.O.,
TRIVANDRUM.

2. THE NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE, T.C.26/1436, GOVT.PRESS ROAD,
TRIVANDRUM.

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU
SRI.A.C.DEVY SC NEW INDIA INS.CO.
SRI.A.C.DEVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 121 OF 2007

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Dated this the 30th day of March, 2007

J U D G M E N T

First respondent, owner, in O.P(MV) No.1610 of 2000 on the file of the Motor Accidents Claims Tribunal is the appellant. Appeal is filed against the award passed by the Tribunal awarding an amount of Rs.30,250/- with 9% interest, permitting the petitioner, first respondent herein, to realise the amount from the appellant.

2. The first respondent met with an accident on 10.1.2000. He filed the Original Petition claiming compensation alleging that the accident occurred due to the rash or negligent driving of the vehicle by the driver of the offending vehicle. After trial the Tribunal found that the accident occurred due to the negligence of the driver of the vehicle. It was also found that the petitioner was entitled to a compensation of Rs.30.250/- with 9% interest but directed the appellant to pay the amount on the ground that on the date of accident the vehicle was not covered

with a valid policy of insurance. Challenging that award, this appeal is filed.

3. I do not find any reason to interfere with the finding of the Tribunal that the accident occurred due to rash or negligent driving of the vehicle by the driver of the offending vehicle. Tribunal has considered the evidence and came to the right conclusion that the accident occurred due to the negligence of the driver of the vehicle. The compensation awarded is also reasonable. Exhibits A1 to A15 including disability certificate were produced and marked. Evidence on record shows that petitioner sustained an open fracture involving the lower third of the right fibula with injury to the extensor tendons and anterior tibial nerve right ankle. Permanent disability was assessed at 6%.

4. The finding of the Tribunal that the 1st respondent is entitled to compensation is just and reasonable and does not call for any interference. The main dispute in the appeal is regarding the liability to pay the amount awarded. Appellant has produced a copy of the insurance policy issued by the New India Assurance

Company, second respondent in the appeal, to show that on the date of the accident the vehicle in question was covered with a valid policy of insurance. It is now admitted that a policy was issued and on the date of the accident the vehicle was covered with a valid policy of insurance. So, that part of the award by which the Tribunal directed the owner of the vehicle to pay compensation is to be set aside. The compensation awarded has to be paid by the insurer.

In the result, the appeal is allowed in part. The finding of the Tribunal that the owner has to pay the amount awarded is set aside and the insurer is directed to pay the amount as per the award. It goes without saying that if any execution proceedings is pending against the owner alone, the same will have to be closed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

15TH MARCH, 2007